

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 3645 – HB 3949

March 22, 2010

**SUMMARY OF AMENDMENT (015691):** Deletes all language following the enacting clause. Removes the current state action doctrine exemption from federal and state antitrust law for any private act metropolitan hospital authority that has 55 percent or more of the total hospital discharges within its county. The antitrust law exemption would remain in place for private act metropolitan hospitals in counties in which the private act metropolitan hospital is the only hospital provider.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – Not Significant

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Decrease Local Revenue – Exceeds \$100,000

Increase Local Expenditures – Exceeds \$100,000\*

Assumptions applied to amendment:

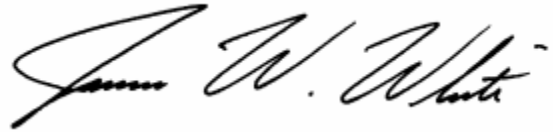
- In *Jackson, Tennessee Hospital Company LLC v. West Tennessee Healthcare, Inc.*, 414 F3d608 (6<sup>th</sup> Cir.2005), the U.S. Sixth Circuit Court of Appeals held that private act metropolitan hospitals are immune from federal and state antitrust liability under the state action doctrine. The state action doctrine exempts subdivisions of state government from antitrust liability when there is a clear state policy authorizing anticompetitive acts. *Id.* At 609. The case involved the Jackson-Madison County General Hospital District. *Id.*
- This bill would partially reverse the holding in this case by stating that state policy does not authorize anticompetitive acts by private metropolitan act hospital authorities in counties in which the hospital operated by the authority has 55 percent of the hospital discharges in the county. The exemption would remain for hospitals operated by these authorities in counties in which the authority's hospital is the only hospital provider.
- Anticompetitive acts by private act metropolitan hospitals are undertaken for the purpose of maximizing hospital utilization and revenue generated for the hospital. These acts are also undertaken to minimize the cost of the hospital's provider agreements. Preventing these acts will decrease local revenue generated by the hospital and will increase local expenditures due to the higher cost of provider agreements.
- No direct cost impact on the TennCare program.

- There are a number of unknown factors that will affect the fiscal impact of the proposed legislation. An exact estimate is not possible but it is reasonably estimated to result in a decrease in local revenue exceeding \$100,000 and an increase in local expenditures exceeding \$100,000.

*\*Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

## **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "James W. White". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "White".

James W. White, Executive Director

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